



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the argument of the parties, the Appeals Board finds:

(1) The issue raised on appeal is subject to review pursuant to K.S.A. 44-534a.

(2) The Appeals Board agrees with and affirms the decision of the Administrative Law Judge, finding the claimant has not established that he suffered injury arising out of and in the course of his employment. Claimant alleges low back injury as a result of repetitive work activities during September 8, 1993, through October 12, 1993. The Appeals Board finds the evidence does not support this claim because claimant did not initially report his back problem as a work-related condition and because claimant had been seeing a chiropractor weekly for low back problems for several months prior to the alleged injury. He had, in fact, requested a back brace in July of 1993, which he indicated was necessary because of work he did on his own as part owner in a car dealership. In addition, claimant has not provided a medical opinion which relates his condition to his work. The initial report of Dr. Pollock indicated the injury was not work related. In his deposition he first testified that this was a typing error. He concluded, however, he couldn't say whether the condition arose from claimant's employment. From review of the record as a whole, the Appeals Board finds claimant has not sustained the burden of establishing by a preponderance of credible evidence that his injury arose out of and in the course of his employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the June 28, 1994, Preliminary Order of Administrative Law Judge George R. Robertson, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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cc: Dale V. Slape, Wichita, KS  
Larry D. Shoaf, Wichita, KS  
Scott Mann, Hutchinson, KS  
George R. Robertson, Administrative Law Judge  
George Gomez, Director